

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

ARLENE HALLOWAY, *as Personal Representative*
of PATRICIA WILLIAMS,

Plaintiff,

v.

CIV 10-0844 JCH/KBM

BNSF RAILWAY CO. and XYZ CORPORATIONS 1-5,
ABC PARTNERSHIPS 1-5 and LMN BUSINESSES 1-5,

Defendants.

**ORDER GRANTING BNSF RAILWAY COMPANY'S MOTION TO DETERMINE THE
SUFFICIENCY OF PLAINTIFF'S ANSWERS TO DEFENDANT BNSF'S AMENDED
THIRD REQUEST FOR ADMISSION TO PLAINTIFF AND MOTION FOR SANCTIONS**

THIS MATTER came before the Court following the Court's entry of the Stipulated Order reached by the parties and submitted for approval. *See Doc. 103* on February 1, 2012. Defendant BNSF contends that Plaintiff's Answers to BNSF's Third Requests for Admission fail to comply with my Order because each and every answer is qualified by the phrase "subject to the language contained within the Court's Order of February 1, 2012, allowing either party within five working days after receipt of service of a party's medical record exhibit list to object to authenticity, admissibility or relevance." *See Doc. 134-1*.

First, I take judicial notice that my Order contained no such language. *See Doc. 103*. Instead, my Order directed that

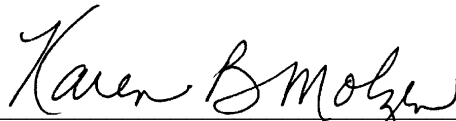
Plaintiff shall fully and completely respond to the requests within 30 days of service. In responding, if Plaintiff provides anything other than an unqualified admission as to all of the documents in the identified Bates range, Plaintiff shall identify with specificity and reference to Bates number each and every page in which Plaintiff

asserts a denial and state the complete basis for the denial. All objections as to relevance and/or evidentiary admissibility of a document shall be reserved for trial.

Id. at 4. Second, Plaintiff failed to respond in opposition to the instant BNSF's Motion to Determine Sufficiency of Answers and for Sanctions (*Doc. 134*). Pursuant to our district's local rules, "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ.7.1(b). Finally, Plaintiff's failure to comply with the specific directions set forth in the agreed-upon order have unnecessarily precipitated the need for BNSF to file this motion for which it has undoubtedly incurred attorney fees and costs. *See* FED. R. CIV. P. 37(a)(4)(A).

Wherefore,

IT IS HEREBY ORDERED that Defendant BNSF's Motion (*Doc. 134*) is **granted**. Plaintiff's Answers to BNSF's Third Request for Admissions are deemed admitted, and BNSF is awarded its reasonable attorney fees and costs incurred in bring this motion.



THE HONORABLE KAREN B. MOLZEN
UNITED STATES CHIEF MAGISTRATE JUDGE